

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

WILLIE WHITE

v.

RESPONDENT,

UNIVERSITY OF MISSOURI, KANSAS CITY

RESPONDENT,

**TREASURER OF THE STATE OF MISSOURI - CUSTODIAN
OF THE SECOND INJURY FUND**

APPELLANT.

DOCKET NUMBER WD74081
**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: September 4, 2012

Appeal From:

Labor and Industrial Relations Commission

Appellate Judges:

Division Three: Thomas H. Newton, P.J., James M. Smart, Jr., and Gary D. Witt, JJ.

Attorneys:

Keith V. Yarwood, Kansas City, MO, for *Respondent White*

Brian J. Fowler, Kansas City, MO, for *Respondent UMKC*

Kimberley Cox Fournier, Kansas City, MO, for *Appellant*

MISSOURI APPELLATE COURT OPINION SUMMARY

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No. WD74081

Labor and Industrial Relations Commission

Before Division Three: Thomas H. Newton, P.J., James M. Smart, Jr., and Gary D. Witt, JJ.

Willie White was injured during the course of his work June 11, 2007. Mr. White filed a claim for permanent partial disability as a result of the injury against his employer and the Second Injury Fund. He later amended his disability claim to a claim for permanent *total* disability.

After a hearing, the Administrative Law Judge (ALJ) entered an award in his favor. The ALJ found Mr. White to be permanently and totally disabled as a result of his 2007 work injury, in combination with his pre-existing disability. The ALJ concluded that the Second Injury Fund was liable for Mr. White's permanent total disability. However, the ALJ denied the claim for benefits for his wife, Gail White -- whom he was married to at the time of his injury and is still married to -- asserted under *Schoemehl v. Treasurer of the State of Missouri*, 217 S.W.3d 900 (Mo. banc 2007).

The Treasurer appealed the determination of permanent total disability on behalf of the Second Injury Fund, and Mr. White appealed the ruling as to the issue of whether Gail White could qualify for successor benefits under *Schoemehl* despite the 2008 amendments to the Workers' Compensation statutes. The Labor and Industrial Relations Commission concluded that the Fund was responsible for Mr. White's permanent total disability, and that Mr. White's claim for successor benefits for his wife "qualifies for application of the *Schoemehl* case."

The Second Injury Fund appeals the Commission's finding that Mr. White's claim for his wife to succeed him to benefits qualifies under *Schoemehl*, arguing dependent benefits cannot "vest" until the injured employee is deceased.

VACATED IN PART AND REMANDED.

Division Three holds: The Commission acted in excess of its power to the extent that it ruled that Gail White will succeed to her husband's benefits because Gail White's claim to dependent benefits was not ripe for review, as her husband is not deceased, and she has

not been denied any right to the benefits upon his death. The judgment is vacated to the extent that it purports to adjudicate Gail White's entitlement to succeed to the disability benefits payable to her husband upon his death. The judgment is affirmed in all other respects, and the case is remanded to the Commission for correction.

Opinion by James M. Smart, Jr., Judge

September 4, 2012

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